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RICHMOND, HITCHCOCK,
FISH & DOLLAR
P.O. Box 2443
Bartlesville OK 74005

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OCT 24 2007

OFFICE OF PETITIONS

In re Application of :
Cross et al. : DECISION ON PETITION
Application No. 10/735,557 :
Filed: December 12, 2003 :
Title: PROCESS FOR THE :
REMOVAL OF HEAVY METALS FROM :
GASES, AND COMPOSITIONS :
THEREFOR AND THEREWITH :

This is a decision on the PETITION UNDER 37 CFR 1.181(a) filed June 29, 2007. This decision is made in light of the previous paper entitled "COMMUNICATION" filed on August 18, 2006, providing additional evidence and requesting withdrawal of the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed December 14, 2005. The Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). A reply was timely filed on March 16, 2006. However, the reply was determined not to place the application in condition for allowance. (See Advisory Action mailed March 29, 2006). No further reply considered timely filed and no extension of time considered obtained, the application became abandoned effective June 15, 2006. (Receipt of a later-filed appeal brief on June 30, 2006 is acknowledged). A courtesy Notice of Abandonment was mailed on July 3, 2007.

Petitioner maintains that a response was timely filed. Specifically, petitioner maintains that a previous mailing of a

"Notice of Appeal" by the Certificate of Mailing on June 6, 2006, and the mailing of an accompanying "Petition for Extension of Time to File Notice of Appeal" by Certificate of Mailing also on June 6, 2006. The petition includes copies of the previously mailed correspondence.

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

By communication filed August 18, 2006, Applicants timely responded to the Notice of Abandonment mailed July 3, 2006. It is noted that the correspondence, including the extension of time, included a certificate of mailing signed and dated June 6, 2006. However, the paper included a date of signing stamp thereon of June 13, 2006. By statement filed on August 18, 2006, registered patent practitioner Lynda Jolly, who also signed the June 6, 2006 certificates of mailing attests that the Notice of Appeal and Petition were each filed by Certificate of Mailing on June 6, 2006, prior to the June 14, 2006 deadline.

The extension of time for response within three months, necessary to make the instant response mailed June 6, 2006, has

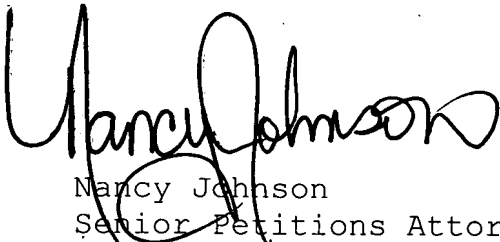
been charged to Deposit Account No. 16-1575, as authorized. (It is noted that the extension of time left blank the Deposit Account Number. Nonetheless, it was included in the Notice of Appeal, which authorized any required fees.)

In view thereof, the Notice of Abandonment mailed July 3, 2006 is hereby **vacated**, and the holding of abandonment is **withdrawn**.

No fee is required on petition under § 1.181.

Technology Center AU 1754 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for action by the examiner in response to the Appeal Brief timely filed June 30, 2006 (and resubmitted June 29, 2007).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions